

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of Proposed Plan Change 4 to the
Christchurch District Plan: Short-
Term Accommodation

**MINUTE 1 – PROCEDURAL DETERMINATION ON REQUEST BY CLEARWATER LAND
HOLDINGS LIMITED AND CLEARWATER PROJECTS LIMITED TO STRIKE OUT
SUBMISSION OF CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED**

Introduction

1. Christchurch International Airport Limited (CIAL) has lodged a submission (S101) on Proposed Plan Change 4 (PC4) seeking, amongst other matters, that the provisions of the Specific Purpose (Golf Resort) Zone be amended to align with the regulations proposed for visitor accommodation in the rest of the district.
2. Further submissions have been lodged in opposition to the CIAL submission by Clearwater Land Holdings Limited (CLHL – FS07) and Clearwater Projects Limited (CPL – FS09). These further submissions seek that the relief sought by CIAL in respect of the Specific Purpose (Golf Resort) Zone be declined. CLHL and CPL also seek a preliminary ruling from the Council that this relief is beyond the scope of PC4.
3. Following receipt of the further submissions, Christchurch City Council (the Council) received an email from Mr Cleary, counsel for CLHL and CPL (17 February 2021)¹. Mr Cleary pointed out that the further submissions seek the issue of scope be resolved as a preliminary matter, requesting that the Council use its powers to strike out a submission before a hearing if it would be an abuse of process to allow that submission to be taken further (s41D RMA).

¹ A copy of email from Mr Gerard Cleary, 17 February 2021, is attached to this Minute. The email was copied to Ms Hill, counsel for CIAL.

4. Mr Pizzey, Legal Counsel – Litigation for the Council, prepared a memo addressing the potential scope issue². Mr Pizzey’s advice to the District Plan team is that the Hearings Panel (the Panel) has authority to run its hearing process as it thinks fit, subject to the procedural requirements of the Resource Management Act (RMA). It has the option of addressing this scope issue as a preliminary matter, by way of a preliminary recommendation to the Council to strike out the submission. Alternatively, the Panel has the option of considering the scope matter as part of its substantive hearing of submissions, with any recommendation on scope being made as part of its substantive recommendations following the hearing of PC4.

Jurisdiction

5. The further submissions from CLHL and CPL do not identify the provisions of the RMA under which their requests for a preliminary ruling are made. They simply refer to the relief sought by CIAL as being “*beyond the scope of Plan Change 4*”. In his subsequent email, Mr Cleary referred to Council’s powers to strike out a submission under s41D RMA.

6. The relevant aspects of section 41D(1) of the RMA state:

“(1) An authority conducting a hearing on a matter described in section 39(1) may direct that a submission or part of a submission be struck out if the authority is satisfied that at least 1 of the following applies to the submission or the part:

(a) it is frivolous or vexatious:

(b) it discloses no reasonable or relevant case:

(c) it would be an abuse of the hearing process to allow the submission or the part to be taken further...”

7. The hearing of submissions and further submissions on a Plan Change is one of the matters described in section 39(1). Section 41D(1) is clear that any direction to strike out all or part of a submission is at the discretion of the authority conducting the hearing. Section 41D(2)(a) states that the authority may make a direction under

² Memo from Mr Brent Pizzey to Alison McLaughlin and Mark Stevenson (District Plan team), dated 24 March 2021, is attached to this Minute.

this section before, at, or after the hearing.

Panel's Determination

8. The Panel appointed by the Council to conduct the hearing for PC4 has considered the scope issue raised by CLHL and CPL.
9. The purpose and reasons for PC4 are set out in the Explanation to the proposed plan change and in the Council's Section 32 evaluation. The Overview of PC4 in the Section 32 evaluation states, for example, that PC4 proposes amendments to the District Plan to manage the effects associated with the use of residential dwellings for visitor accommodation.
10. The Panel has noted the Explanation for Proposed PC4 which states: "*This Plan Change does not address the standards for visitor accommodation activities in the Specific Purposed (Golf Resort) Zone.*" This is also stated in the Council's Section 32 Evaluation of Proposed PC4.
11. One of the legal principles regarding scope and the Panel's power to recommend on a submission is whether the submission is "on" the proposed plan change. The meaning of "on" was considered by the High Court in *Palmerston North City Council v Motor Machinists Ltd*³. The questions that must be considered relate to:
 - (a) whether the submission addresses the change to the pre-existing status quo brought about by the proposed plan change; and
 - (b) whether there is a real risk that people directly or potentially directly affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.
12. In the Panel's view, any determination of whether the relevant part of the submission from CIAL is "on" PC4 requires a wider consideration than simple reliance on the statements (referred to above) that PC4 does not address the provisions of Specific Purpose (Golf Resort) Zone. It will require consideration of

³ [2013] NZRMA 519

matters still to be advanced through any evidence and legal submissions from CIAL, CLHL, CPL and the Council, including the case to be advanced in support of its submission by CIAL.

13. As to whether it is an abuse of the hearing process to allow this aspect of CIAL's submission to be taken further, the Panel considers this will also depend on the nature of the cases advanced by the parties involved. In the Panel's view, we need to have the benefit of the Section 42A report from the Council, the evidence and submissions at the hearing.
14. It is, therefore, the Panel's preference for any considerations regarding scope of submissions to be made as part of the substantive hearing of the submissions, rather than as a preliminary matter. Accordingly, we decline to recommend that the Council strike out the part of CIAL's submission relating to the Specific Purpose (Golf Resort) Zone at this time. This is without prejudice to CLHL, CPL, CIAL and the Council addressing this matter during the course of the hearing, should they wish to do so.
15. The Panel has not seen any need at this stage to invite a response from CIAL to the scope issue raised in the further submissions from CLHL and CPL. As we express above, we consider this would be more usefully addressed at the hearing, as part of the substantive consideration of the submissions on Proposed PC4.

Sarah Dawson (Chair)

29 March 2021

Legal Services Unit – Corporate Services

Memo

Legal Privilege Applies

Not to be distributed without approval of Head of Legal Services

Date: 24 March 2021

From: Brent Pizzey (Legal Counsel - Litigation)

To: Alison McLaughlin and Mark Stevenson (District Plan team)

Invitation to PC4 Hearings Panel to address potential scope issue lex22879

The lawyer acting for two submitters on this plan change - Clearwater Land Holdings Limited & Clearwater Projects Limited – has requested that the Council resolve, as a preliminary matter, whether a submission by CIAL is outside the scope of PC4. That request, by email dated 17 February 2021, is attached to this memorandum.

The relevant submissions are at <http://www.ccc.govt.nz/the-council/plans-strategies-policies-and-bylaws/plans/christchurch-district-plan/changes-to-the-district-plan/proposed-changes-to-the-district-plan/planchange4/>:

S101: Christchurch International Airport Ltd (CIAL)

FS7: Clearwater Land Holdings Ltd

FS9: Clearwater Projects Ltd

The Hearings Panel has authority to run its hearing process as it thinks fit, subject to the procedural requirements of the Resource Management Act. It has the option of addressing this scope issue as a preliminary matter. If it did so, it would make a preliminary recommendation to the Council to strike out the submission.

The Hearings Panel also has the option of considering the scope matter as part of its substantive hearing of submissions. It would make a recommendation to the Council on scope matters when making its substantive recommendations following the hearing of PC4.

Please forward this memorandum to the Hearings Panel, copied to all submitters, so that the Hearings Panel can make a procedural decision on the attached email request.

Brent Pizzey

Legal Counsel - Litigation

Legal Services Unit

Brent.Pizzey@ccc.govt.nz

From: Gerard Cleary <gerard.cleary@ah.co.nz>
Sent: Wednesday, 17 February 2021 11:56 am
To: PlanChange <PlanChange@ccc.govt.nz>; McLaughlin, Alison <Alison.McLaughlin@ccc.govt.nz>
Cc: 'Amy Hill' <Amy.Hill@chapmantripp.com>
Subject: RE: Further Submission on Plan Change 4 to the Christchurch District Plan

Hi Alison

I am just following up on the further submissions lodged on behalf of our clients, Clearwater Land Holdings Limited & Clearwater Projects Limited. Both submissions take the position that the amendments sought by CIAL to the Special Purpose (Golf Resort) Zone at Clearwater (Clearwater Zone) are outside the scope of Plan Change 4. This is not solely because the Clearwater Zone was specifically excluded from the ambit of Plan Change 4 at the outset, but also because CIAL has sought further changes to the Zone provisions that have no relationship at all with the subject matter of Plan Change 4.

I have requested that the Council resolve the issue of scope as a preliminary matter. As you know, it is within the Council's powers to strike out a submission before a hearing if it would be an abuse of process to allow that submission to be taken further (s 41D RMA).

Accordingly, I would be grateful if you could advise as to how the Council intends to respond to this preliminary issue of scope?

I have copied in Ms Hill of Chapman Tripp who represent CIAL in this matter.

Kind regards

Gerard Cleary

Partner

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